

No. 14701

**United States
Court of Appeals
for the Ninth Circuit**

KIMBERLY CORPORATION, a Corporation,
Appellant,

vs.

HARTLEY PEN COMPANY, a Corporation
LINDY PEN CO., INC., a Corporation, and
SIDNEY LINDEN, Individually and Doing
Business as Adams-Linden Co.,
Appellees.

**Supplemental
Transcript of Record**

**Appeal from the United States District Court for the
Southern District of California,
Central Division**

FILE

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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For Appellees:

HARRIS, KIECH, FOSTER & HARRIS,
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417 South Hill Street,
Los Angeles 13, California.

DANIEL A. ROSEN,
210 West 7th Street,
Los Angeles 14, California.

In the United States District Court, Southern
District of California, Central Division

Civil Action No. 15367-WM

HARTLEY PEN COMPANY, a California Corporation,

Plaintiff,

vs.

LINDY PEN CO., INC., a California Corporation;
SIDNEY LINDEN, Individually and Doing
Business as ADAMS-LINDEN CO., and
JOHN DOE,

Defendants.

KIMBERLY CORPORATION, a California Corporation,

Intervener-Plaintiff, Cross-claimant and Counter-claimant,

vs.

HARTLEY PEN COMPANY, a California Corporation,

Cross-defendant,

LINDY PEN CO., INC., a California Corporation,
and SIDNEY LINDEN, Individually and Doing
Business as ADAMS-LINDEN CO.,

Counter-defendants.

SUPPLEMENTAL FINDINGS OF FACT, CON-
CLUSIONS OF LAW, AND JUDGMENT

Whereas, on December 22, 1954, Judgment Dismissing Intervener's First Amended Complaint was

entered in this action, and on February 3, 1955, a Notice of Appeal therefrom was filed by intervener Kimberly Corporation; and

Whereas, on February 20, 1956, a mandate was issued by the Court of Appeals for the Ninth Circuit ordering and adjudging that said appeal be dismissed; and

This cause having come on for further proceedings before this Court, and after a hearing duly had and reconsideration of the record in this action and the attached Stipulation of the parties hereto, the following supplemental findings of fact and conclusions of law are hereby adopted by the Court:

Supplemental Finding of Fact

XXIII.

There is no just reason for delay in entering the following final judgment as to intervener Kimberly Corporation.

Supplemental Conclusions of Law

VII.

There is no just reason for delay in entering the following final judgment, and the entry of such judgment is hereby expressly directed:

Final Judgment

In accordance with the findings of fact and conclusions of law entered on December 22, 1954, by this Court in the above-entitled action and the fore-

going supplemental findings of fact and conclusions of law, and it having been determined that there is no just reason for delay and there being an express direction by this Court for the entry of judgment, it is ordered, adjudged, and decreed: [3*]

I.

Each and every one of the claims of the intervener, Kimberly Corporation, against the plaintiff, Hartley Pen Company, as set forth in the Intervener's First Amended Complaint, is denied because of laches.

II.

The Intervener's First Amended Complaint is hereby dismissed with prejudice, and without leave to amend.

III.

The plaintiff, Hartley Pen Company, shall recover from the intervener, Kimberly Corporation, its costs and disbursements herein in the amount of \$59.10.

Dated: March 27, 1956.

/s/ WM. C. MATHES, JR.,

United States District Judge.

Approved as to Form:

FLAM & FLAM,

By /s/ JOHN FLAM,

Attorneys for Intervener,
Kimberly Corporation.

HARRIS, KIECH, FOSTER &
HARRIS,

By /s/ FORD HARRIS, JR.,
Attorneys for Plaintiff,
Hartley Pen Company.

/s/ DONALD A. ROSEN,
Attorney for Defendants, Lindy Pen Co., Inc., and
Sidney Linden, Individually and d/b/a Adams-
Linden Co. [4]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between the parties to the above-entitled action through their respective attorneys that the foregoing Supplemental Findings of Fact, Conclusions of Law, and Judgment may be made and entered by the Court, and that such Judgment may be decreed to be final, subject to the right of appeal therefrom to be preserved to each of the parties hereto as from any final judgment.

It is further stipulated that the record on appeal now before the Court of Appeals for the Ninth Circuit in Appeal No. 14,701, and the briefs of the parties on file in connection therewith, together with any supplemental transcript of appeal which may be filed in connection with said action, shall constitute the record on appeal in any new appeal

prosecuted by any of the parties to this action from the foregoing Judgment.

Dated: March 27, 1956.

HARRIS, KIECH, FOSTER &
HARRIS,

By /s/ FORD HARRIS, JR.,
Attorneys for Plaintiff,
Hartley Pen Company;

FLAM & FLAM,

By /s/ JOHN FLAM,
Attorneys for Intervener,
Kimberly Corporation.

/s/ DONALD A. ROSEN,
Attorney for Defendants, Lindy Pen Co., Inc., and
Sidney Linden, Individually and d/b/a Adams-
Linden Co.

[Endorsed]: Filed March 27, 1956.

Docketed and entered March 28, 1956. [6]

[Title of District Court and Cause.]

NOTICE OF APPEAL UNDER
RULE 73(b) F.R.C.P.

Notice is hereby given that Kimberly Corpora-
tion, intervener [7] above named, hereby appeals
to the United States Court of Appeals for the Ninth
Circuit from the judgment entered in this action
on March 27, 1956.

Dated: March 29, 1956.

Respectfully submitted,

FLAM and FLAM,

By /s/ JOHN FLAM,

Attorneys for Intervener.

EUGENE H. MARCUS, ESQ.,
Of Counsel.

[Endorsed]: Filed April 2, 1956. [8]

[Title of District Court and Cause.]

STIPULATION UNDER RULE 75(f) F.R.C.P.

It Is. Hereby Stipulated by and between the parties to the above-entitled action, through their respective counsel, that the following shall constitute the record on appeal:

1. Printed transcript of record in Kimberly Corporation, a corporation, appellant, vs. Hartley Pen Company, a corporation; Lindy Pen Co., Inc., a corporation, and Sidney Linden, individually and doing business as Adams-Linden Co., appellees, Appeal No. 14701 in the United States Court of Appeals for the Ninth Circuit.

2. Stipulation executed by and between the parties herein on March 27, 1956, filed on March 27, 1956.

3. Supplemental Findings of Fact, Conclusions of Law and Judgment, filed March 27, 1956.

4. Notice of Appeal, filed April 2, 1956.

5. This stipulation.

Since the said printed transcript (item No. 1) above is already on file in the Court of Appeals for

the Ninth District, It Is Stipulated that the Clerk of this Court transmit to the Appellate Court only the material designated as items 2 to 5, inclusive, hereinabove defined. That printed transcript includes all material required by the rules of this court and the Court of Appeals for the Ninth Circuit relating to the hearing of the appeal, including the pleadings, original findings and judgment, testimony of witnesses, exhibits and concise statement of points upon which appellant will rely; and by stipulation to be filed in the appellate court, such transcript is to be adopted as a part of the transcript in this appeal.

Dated: April 2, 1956.

HARRIS, KIECH, FOSTER &
HARRIS,

By /s/ FORD HARRIS, JR.,

Attorneys for Hartley Pen
Company. [10]

FLAM and FLAM, and
EUGENE H. MARCUS,

By /s/ JOHN FLAM,

Attorneys for Kimberly Cor-
poration.

/s/ DONALD A. ROSEN,

Attorney for Defendants, Lindy Pen Co., Inc., and
Sidney Linden, Individually and d/b/a Adams-
Linden Co.

[Endorsed]: Filed April 30, 1956. [11]

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 11, inclusive, contain the original:

Supplemental Findings of Fact, Conclusions of Law, and Judgment;

Notice of Appeal;

Stipulation re Designation of Contents of Record on Appeal;

all in the above-entitled cause, and constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above case.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and seal of the said District Court this 1st day of May, 1956.

JOHN A. CHILDRESS,
Clerk;

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 14701. United States Court of Appeals for the Ninth Circuit. Kimberly Corporation, a Corporation, Appellant, vs, Hartley Pen Company, a Corporation; Lindy Pen Co., Inc., a Corporation; and Sidney Linden, Individually and Doing Business as Adams-Linden Co., Appellees. Supplemental Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed May 2, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

